

Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	File No.: EB-07-SE-327
)	
Corr Wireless Communications, LLC)	NAL/Acct. No.: 200832100064
)	
)	FRN: 0003804101

FORFEITURE ORDER

Adopted: July 6, 2012**Released: July 6, 2012**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) to Corr Wireless Communications, LLC (Corr) for willfully and repeatedly violating former Section 20.19(d)(2)¹ of the Federal Communications Commission's (Commission or FCC) rules (Rules) by failing to include in its digital wireless handset offerings at least two handset models that met the inductive coupling standard for hearing aid compatibility by the applicable deadline. These hearing aid compatibility requirements serve to ensure that consumers with hearing loss have access to advanced telecommunications services.²

II. BACKGROUND

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing loss to access digital wireless telecommunications.³ The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.⁴

¹ 47 C.F.R. § 20.19(d)(2) (2006).

² See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11174, para. 18 (2010) (*2010 Policy Statement*).

³ See *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753 (2003); Erratum, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (*Hearing Aid Compatibility Reconsideration Order*). The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C) (*Hearing Aid Compatibility Act*).

⁴ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777, para. 56; see also 47 C.F.R. § 20.19(b)(1), (2). The *Hearing Aid Compatibility Order* described the acoustic coupling and the inductive coupling (telecoil) modes as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into sound by the hearing aid speaker. In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as

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Specifically, the Commission adopted a standard for radio frequency interference (formerly the U3 rating, now the M3 rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (formerly the U3T rating, now the T3 rating) to enable inductive coupling with hearing aids operating in telecoil mode.⁵ The Commission further established, for each standard, deadlines by which handset manufacturers and digital wireless service providers were required to offer specified numbers of digital wireless handset models rated hearing aid-compatible.⁶ Specifically, by September 16, 2005, manufacturers and service providers were required to offer at least two handset models per air interface that met the M3 rating for radio frequency interference.⁷ In addition, by September 18, 2006, manufacturers and service providers were required to offer at least two handset models per air interface that met the T3 rating for inductive coupling.⁸ These handset deployment requirements apply to each air interface over which service providers offer service.⁹

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needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

Hearing Aid Compatibility Order, 18 FCC Rcd at 16763, para. 22.

⁵ Former Section 20.19(b)(1) provided that a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it receives a U3 rating as set forth in “American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, ANSI C63.19-2001.” 47 C.F.R. § 20.19(b)(1) (2006). Former Section 20.19(b)(2) provided that a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it receives a U3T rating as set forth in ANSI C63.19-2001. 47 C.F.R. § 20.19(b)(2) (2006). On April 25, 2005, the Commission’s Office of Engineering and Technology (OET) announced that it would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2005. *See OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature*, Public Notice, 20 FCC Rcd 8188 (OET 2005). On June 6, 2006, the Commission’s Wireless Telecommunications Bureau (WTB) and OET announced that the Commission would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2006. Thus, during the time period relevant here, applicants for certification could rely on either the 2001 version, the 2005 version, or the 2006 version of the ANSI C63.19 standard. *See Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard*, Public Notice, 21 FCC Rcd 6384 (WTB/OET 2006). In addition, because the 2001 and 2005 versions of the ANSI C63.19 technical standard used the same technical criteria to determine the hearing aid compatibility and the inductive coupling capability of a wireless phone, to avoid confusion, the “M” and “T” labeling system associated with the 2005 and 2006 versions of the standard may be used for compatibility testing performed under any of these versions. *See Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11238, n.118.

⁶ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; *see also* 47 C.F.R. § 20.19(c), (d) (2006). These requirements did not apply to service providers and manufacturers that met the *de minimis* exception. *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16775-76, para. 53. In order to monitor the availability of these handsets, the Commission also required manufacturers and service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation, and then annually thereafter through the fifth year of implementation. *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787, para. 89; *see also Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (WTB 2004).

⁷ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; *see also* 47 C.F.R. § 20.19(c).

⁸ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; *see also* 47 C.F.R. § 20.19(d).

⁹ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65. The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. At the time the *Hearing Aid Compatibility Order* was released, the leading air (continued....)

3. Corr is a Tier III wireless carrier that offers service over the GSM air interface.¹⁰ In its November 10, 2006, Status Report on Hearing Aid Compatibility, Corr reported that it offered for sale several handset models that met the M3 rating for radio frequency interference.¹¹ However, Corr's 2006 Report did not address its handset model offerings that were rated T3 for inductive coupling.¹² The Wireless Telecommunications Bureau referred the matter to the Enforcement Bureau (Bureau) for investigation and possible enforcement action.

4. Subsequently, the Bureau's Spectrum Enforcement Division (Division) issued a letter of inquiry (LOI) to Corr, directing the company to submit a sworn written response to a series of questions related to its compliance with the hearing aid compatibility requirements.¹³ Corr responded to the LOI on September 21, 2007.¹⁴ In its LOI Response, Corr asserted that it began offering for sale one T3-rated handset model, the Motorola V3i, on October 23, 2006.¹⁵ Corr further asserted that it began offering for sale two additional T3-rated handset models, the Nokia 6085 and the Nokia 6126h, in August 2007.¹⁶

5. On July 31, 2008, the Division issued a *Notice of Apparent Liability for Forfeiture (NAL)* against Corr,¹⁷ finding that Corr apparently willfully and repeatedly violated former Section 20.19(d)(2) of the Rules by failing to offer to consumers at least two T3-rated handset models by September 18, 2006.¹⁸ The Division noted in the *NAL* that Corr began offering its first T3-rated handset model on October 23, 2006, and that Corr did not come into full compliance by offering a second T3-rated handset model until August 2007, nearly a full year after the deadline.¹⁹ The Division also found that Corr's atypical size for a Tier III carrier, its ability to pay a forfeiture, and the duration of the violation warranted

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interfaces included Code Division Multiple Access (CDMA), Time Digital Multiple Access (TDMA), Global System for Mobile Communications (GSM), and Integrated Dispatch Enhanced Network (iDEN). *See id.* at n.127.

¹⁰ Tier III carriers are non-nationwide wireless radio service providers with 500,000 or fewer subscribers as of the end of 2001. *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14847-48, paras. 22-23 (2002).

¹¹ *See* Corr Wireless Communications Status Report on Hearing Aid Compatibility, WT Docket No. 01-309 (Nov. 10, 2006) (2006 Report), at 1.

¹² *See id.*

¹³ *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Tom Buchanan, Corr Wireless Communications, LLC (Sept. 10, 2007) (on file in EB-07-SE-327).

¹⁴ *See* Letter from Donald J. Evans, Esq., Fletcher, Heald & Hildreth, P.L.C., Counsel to Corr Wireless Communications, LLC, to Marlene Dortch, Secretary, FCC Office of the Secretary (Sept. 21, 2007) (on file in EB-07-SE-327) (LOI Response).

¹⁵ *See id.* at 3.

¹⁶ *See id.* at 4.

¹⁷ *See Corr Wireless Communications, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11567 (Enf. Bur. 2008).

¹⁸ *See id.* at 11567, para. 1.

¹⁹ *See id.* at 11572, para. 12. We note that given the Division's analysis at the time, a monetary forfeiture was not imposed for Corr's failure to offer its first T3-rated handset model after the September 18, 2006 deadline. *See id.* at 11572-73, paras. 12-13.

an upward adjustment of the \$15,000 base forfeiture.²⁰ Accordingly, the Division found Corr apparently liable for a forfeiture in the amount of \$30,000.²¹

6. On August 29, 2008, Corr filed a response to the NAL²² requesting that the proposed forfeiture be reduced or canceled.²³ In its NAL Response, Corr first argues that the proposed forfeiture should be canceled because two of the handset models it offered prior to the applicable deadline—the Nokia 6101h and 6102h handset models—would qualify for a T3 rating if used in conjunction with an external add-on component, the Nokia LPS-4 loop set attachment.²⁴ In support, Corr asserts that former Section 20.19(b) of the Rules is silent on whether a handset model’s hearing aid compatibility function must be internal to the handset and that language in the *Hearing Aid Compatibility Order* indicating that a handset model’s hearing aid compatibility function “must be provided as an integral part of the phone” is not controlling.²⁵ In the alternative, Corr argues that the *Hearing Aid Compatibility Order* expressly permits the use of external add-ons that do not “significantly enlarge or alter the shape or weight of the phone as compared to other phones offered by the manufacturer.”²⁶ Corr therefore claims that because the Nokia LPS-4 Loop set attachment did not alter the shape, size, or weight of the handset models with which it was used, the Nokia handset models it offered were compliant with former Section 20.19(d)(2).²⁷

7. Corr also argues that the proposed forfeiture should be reduced because it is excessive, arbitrary, and capricious.²⁸ In this regard, Corr asserts that Section 1.80 of the Rules does not establish a base forfeiture amount for failure to comply with the hearing aid compatibility requirements and that the Commission may not establish and impose such a fine *ex post facto*.²⁹ Corr also asserts that the \$15,000 base forfeiture is excessive in light of the small number of Corr’s subscribers who were potentially affected and in comparison to other forfeitures specified in Section 1.80.³⁰

8. Corr further contends that the Division’s assessment of a \$15,000 upward adjustment of the base forfeiture is inconsistent with prior precedent involving violations of the hearing aid-compatible

²⁰ See *id.* at 11572-73, para. 13.

²¹ See *id.* at 11573, para. 13.

²² See Corr Wireless Communications, LLC, Response to Notice of Apparent Liability for Forfeiture (Aug. 29, 2008) (NAL Response).

²³ See *id.* at 1.

²⁴ See *id.* at 3-4.

²⁵ See *id.* at 4 (quoting *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16778, para. 61).

²⁶ *Id.*

²⁷ See *id.* at 4-5. In this regard, Corr also notes that a Nokia representative initially advised Corr that the Nokia LPS-4 loop set attachment, when coupled with the Nokia handsets, met the T3 standard. See *id.* at 3. But see *infra* para. 12.

²⁸ See *id.* at 1.

²⁹ See *id.* at 5.

³⁰ See *id.* at 5-6. Corr claims that “of its almost 40,000 subscribers, only about 880 people might have a use for the HAC products mandated by the Commission’s rules.” *Id.* at 5. Corr provides this estimate based on data that it contends indicate that approximately 10% of the American population is hearing impaired to some extent, although only 22% of that number are sufficiently impaired to use a hearing aid. See *id.* (citing http://www.americanhearingbenefits.com/hearing_losshtml (2008)).

handset deployment requirements by other Tier III carriers³¹ and is not reconcilable with similar upward adjustments assessed against much larger and more profitable carriers.³² In this regard, Corr claims that the Division's characterization of Corr as an atypical Tier III carrier with over 300,000 subscribers was inaccurate,³³ and that Corr is not the type of "mega-conglomerate" for which ability to pay upward adjustments were intended.³⁴ Finally, Corr raises several arguments that it contends justify a reduction of the proposed forfeiture, including a claim that it "voluntarily disclosed" the handsets it listed in the 2006 Report,³⁵ that the company has a history of overall compliance,³⁶ and that the company made good faith efforts to comply much like parties that had received waivers of the hearing aid compatibility requirement in the past.³⁷

III. DISCUSSION

9. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),³⁸ Section 1.80 of the Rules,³⁹ and the Commission's *Forfeiture Policy Statement*.⁴⁰ In examining Corr's NAL Response, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation

³¹ See *id.* at 6 (citing *Blanca Telephone Company*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9398 (Enf. Bur. 2008) (response pending)).

³² See *id.* at 6-7 (citing *T-Mobile Northeast, L.L.C.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 11799, 11806-07, para. 19 (Enf. Bur. 2006) (*T-Mobile Northeast*) (upwardly adjusting a \$7,000 base forfeiture to \$14,000 based on the company's size and ability to pay, and downwardly adjusting the proposed forfeiture based on the company's voluntary disclosures), *consent decree ordered*, Order and Consent Decree, 24 FCC Rcd 160 (Enf. Bur. 2009); *SunCom Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 8681, 8688-89, paras. 17-18 (Enf. Bur. 2008) (forfeiture paid) (upwardly adjusting a \$30,000 base forfeiture to \$60,000 based on a finding, *inter alia*, that it is "appropriate to set the forfeiture amount at a higher level for larger entities, such as Tier II carriers"))).

³³ See *id.* Specifically, Corr asserts that it is a small Tier III rural cellular telephone company that operates outside of any top 100 market and that Corr's 2007 Form 477 (Local Telephone Competition and Broadband Reporting) indicates that it had only 39,481 subscribers. See *id.* Corr further argues that the forfeiture proposed in the NAL "creates the appearance" that the Division simply doubled the \$15,000 forfeiture for the violation that was within the statute of limitations because no forfeiture could be assessed for the violation that was outside the statute of limitations. See *id.* at 7.

³⁴ See *id.* at 6-7.

³⁵ See *id.*

³⁶ See *id.*

³⁷ See *id.* at 1-3. Corr explains that the Commission's earlier approval of several requests for waiver of a different hearing aid-compatible handset deployment deadline was prompted by the fact that there was widespread confusion within the industry concerning which handset models were hearing aid-compatible. Corr then appears to reason that similar leniency should be afforded to Corr on the basis of its good faith efforts to comply. See *id.* (citing *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Memorandum Opinion and Order, 22 FCC Rcd 20459, 20472, para. 30 (2007) (*Hearing Aid Compatibility GSM Waivers Extension Order*) (granting seven petitioners extensions of an earlier deployment deadline and relying on "the difficulty they had in obtaining the correct compatibility information created unique and unusual circumstances.")).

³⁸ 47 U.S.C. § 503(b).

³⁹ 47 C.F.R. § 1.80.

⁴⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁴¹ As discussed below, we are unpersuaded by Corr's legal and equitable arguments and find that a forfeiture was validly proposed for Corr's continuing violation of former Section 20.19(d)(2) of the Rules during nearly an entire calendar year. However, we conclude that a reduction of the forfeiture to \$20,000 is warranted in light of additional information provided by Corr in its NAL Response concerning its actual size.

10. At the outset, we reject Corr's contention that former Section 20.19(b) and the *Hearing Aid Compatibility Order* permit the use of add-on components to achieve a handset model's hearing aid compatibility.⁴² The statutory mandate on this point is clear: the Hearing Aid Compatibility Act expressly states that telephones must "provide *internal* means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility."⁴³ We therefore reject Corr's argument that former Section 20.19(b) could or should be construed in a manner inconsistent with the plain language of the *Hearing Aid Compatibility Act*.

11. In addition, Corr's argument misses the fundamental point of the Commission's action—to transition from the use of add-on components, an acceptable approach prior to the effective date of the *Hearing Aid Compatibility Order*, to requiring hearing aid compatibility as an internal function of the phone. Specifically, the *Hearing Aid Compatibility Order* makes clear that "[u]ntil hearing aid compatibility is provided internally in digital wireless handsets in accordance with this Order, consumers can reduce or even eliminate the interference to their hearing aids by increasing the distance between the hearing aid and the wireless phone through the use of accessory devices such as neck loops or hands-free headsets."⁴⁴ Thus, by September 18, 2006—the deadline by which manufacturers and service providers were required to offer at least two handset models per air interface that met the T3 rating for inductive coupling in accordance with the *Hearing Aid Compatibility Order*—the Rules required that a handset's hearing aid compatibility function be internal to the handset.⁴⁵

12. Corr acknowledges that the handset manufacturer itself confirmed, after Corr received the Division's LOI, that coupling the Nokia 6101h and 6102h handset models with the Nokia LPS-4 loop set attachment did not, in fact, render these handset models hearing aid-compatible.⁴⁶ We are not persuaded by Corr's argument that it was entitled to rely on initial advice from a Nokia representative that the Nokia 6101h and 6102h handset models qualified for a T3 rating when used in conjunction with the Nokia LPS-4 loop set attachment.⁴⁷ As a Commission licensee, Corr is charged with the responsibility of knowing and complying with the Act and the Rules.⁴⁸ The Commission has long held that mitigation of a

⁴¹ See 47 U.S.C. § 503(b)(2)(E).

⁴² See NAL Response at 3-5.

⁴³ 47 U.S.C. § 610(b)(1)(B) (emphasis added).

⁴⁴ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16778, para. 61.

⁴⁵ See *id.* at 16780, para. 65. The *Hearing Aid Compatibility Order* required manufacturers and service providers to offer at least two handset models per air interface that met the T3 rating for inductive coupling by three years after the date the rule changes were published in the Federal Register. See *id.* at 16802. These rule changes were published in the Federal Register on September 16, 2003. See 68 Fed. Reg. 54,173 (Sept. 16, 2003).

⁴⁶ See NAL Response at 3.

⁴⁷ See *id.*

⁴⁸ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437, para. 12 (2004).

forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors or unfamiliarity with the statutory or regulatory requirements.⁴⁹

13. We also reject Corr's argument that the Commission is precluded from assessing a forfeiture for violations of the hearing aid-compatible handset deployment requirements and that the \$15,000 base forfeiture is excessive.⁵⁰ As we have repeatedly noted, the fact that the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules do not establish a base forfeiture amount for violations of the hearing aid-compatible handset deployment requirements set forth in Section 20.19 of the Rules in no way suggests that a forfeiture should not be imposed for such violations.⁵¹ The *Forfeiture Policy Statement* states that "any omission of a specific rule violation from the . . . [forfeiture guidelines] . . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant."⁵² The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis under its general forfeiture authority contained in Section 503 of the Act.⁵³

14. We are similarly unpersuaded by Corr's claim that the forfeiture is excessive. As noted in the *NAL*, in determining the appropriate forfeiture amount for violation of the hearing aid-compatible handset deployment requirements, we have taken into account that these requirements serve to ensure that consumers with hearing loss have access to advanced telecommunications services. In adopting the hearing aid compatibility rules, the Commission underscored the strong and immediate need for such access, stressing that individuals with hearing loss should not be denied the public safety and convenience benefits of digital wireless telephony.⁵⁴ As the Commission has explained, the demand for hearing aid-compatible handsets is likely to increase with the public's growing reliance on wireless technology and with the increasing median age of our population.⁵⁵ In addition, the Commission has repeatedly

⁴⁹ See, e.g., *Emery Telephone*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 23854, 23859, para. 12 (1998), *recon. dismissed in part and denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999); *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846, para. 5 (1993); *Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 3 (1991); *Lakewood Broadcasting Service, Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438, para. 6 (1972). Moreover, the Commission has consistently "refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations." See also *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002); *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244, para. 21 (1984).

⁵⁰ See *NAL* Response at 5-6.

⁵¹ See, e.g., *Farmers Cellular Telephone, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 8622, 8627, paras. 10, 13 (Enf. Bur. 2008), (response pending) (proposing a forfeiture of \$30,000 for failure to offer two handset models that met the T3 rating for inductive coupling by the applicable deadline); *South Slope Cooperative Telephone Company d/b/a South Slope Wireless*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4706, 4710, paras. 9, 12 (Enf. Bur. 2008), (response pending) (proposing a \$15,000 forfeiture for failure to offer two handset models that met the T3 rating for inductive coupling by the applicable deadline); see also *Panhandle Telecommunications Systems, Inc.*, 21 FCC Rcd 11788, 11794-95, paras. 16-18 (Enf. Bur. 2006) (forfeiture paid) (establishing a \$7,000 base forfeiture for constructing a facility prior to completing historic preservation or other environmental reviews required under Section 1.1307(a) of the Rules).

⁵² *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22.

⁵³ See *id.*

⁵⁴ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755, para. 4.

⁵⁵ See *id.* at 16756, para. 5 (noting that approximately one in ten Americans, or 28 million Americans, have some level of hearing loss, that the proportion increases with age, and that the number of those affected will likely grow as (continued....))

emphasized that violations of the hearing aid-compatible handset deployment requirements are serious in nature because “the failure to make compatible handsets available to consumers actually prevents hearing aid users from accessing digital wireless communications.”⁵⁶ Accordingly, we generally apply a base forfeiture amount of \$15,000 to reflect the gravity of these violations.⁵⁷ We have applied the \$15,000 base forfeiture on a per handset model basis (i.e., for each handset model below the minimum number of hearing aid-compatible models required by the Rules).⁵⁸

15. Corr further argues that the proposed forfeiture should be canceled or reduced on equitable grounds because the Commission had previously granted requests for waiver of a different hearing aid-compatible handset deployment deadline.⁵⁹ We disagree. The extensions of time to which Corr refers were granted to companies that timely sought waiver of the hearing aid compatibility rules.⁶⁰

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the median age increases). See also Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, Report on the Status of Implementation of the Commission’s Hearing Aid Compatibility Requirements, 22 FCC Rcd 17709, 17719, para. 20 (2007) (noting, just four years later, that the number of individuals with hearing loss in the United States was “at an all time high of 31 million people – with that number expected to reach approximately 40 million people at the end of [2010]”).

⁵⁶ See *T-Mobile USA, Inc.*, File No. EB-10-SE-127, Notice of Apparent Liability for Forfeiture, FCC 12-39, 2012 WL 1305323, at *5, para. 18 (Apr. 13, 2012) (*T-Mobile USA*); see also, *South Canaan Cellular Communications Company, L.P.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 20, 24, para. 11 (Enf. Bur. 2008) (forfeiture paid) (“*South Canaan*”) (finding that “a violation of the labeling requirements, while serious because it deprives hearing aid users from making informed choices, is less egregious than a violation of the handset requirements because failure to make compliant handsets available actually deprives hearing aid users from accessing digital wireless communications”). See also, e.g., *NEP Cellcorp, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8, 13, para. 11 (Enf. Bur. 2009) (forfeiture paid) (*NEP Cellcorp*); *Pinpoint Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9290, 9295, para. 11 (Enf. Bur. 2008), *consent decree ordered*, Order and Consent Decree, 24 FCC Rcd 2951 (Enf. Bur. 2009) (*Pinpoint Wireless*); *Smith Bagley, Inc.*, 24 FCC Rcd 14113, 14118, para. 11 (Enf. Bur. 2009) (response pending) (*Smith Bagley*).

⁵⁷ See e.g., *NEP Cellcorp*, 24 FCC Rcd at 13, para. 11; *Pinpoint Wireless*, 23 FCC Rcd at 9295, para. 11; *Smith Bagley*, 24 FCC Rcd at 14118, para. 11; *South Canaan*, 23 FCC Rcd at 24, para. 11. See also, *T-Mobile USA*, 2012 WL 1305323 at *6, para. 23 (stating that “[g]iven the potentially substantial and tangible impact on consumers with hearing loss, we will continue to apply the \$15,000 per handset base amount”). In this regard, we also reject Corr’s argument that the base forfeiture amount is excessive in light of Corr’s estimation of the number of its subscribers who may require a hearing aid-compatible phone. Even assuming that Corr’s estimate was accurate, we nevertheless conclude that Corr’s violation was serious because its failure to offer the requisite number of hearing aid-compatible handset models may have prevented Corr’s hearing disabled customers from accessing digital wireless communications.

⁵⁸ See *supra* note 57. We note that in *T-Mobile USA*, the Commission determined that the Bureau’s prior decisions on delegated authority that applied the \$15,000 per handset base forfeiture only with respect to the calendar month within the statute of limitations when the manufacturer or service provider fell the furthest short of the required deployment benchmark—the highest handset shortfall approach—“does not adequately reflect the nature and scope of the violations of hearing aid compatibility rules.” *T-Mobile USA*, 2012 WL 1305323 at *5, para. 18. Accordingly, the Commission applied the \$15,000 base forfeiture “to each failure to offer a hearing aid-compatible handset during each month of the calendar year, rather than a limited subset of such handset shortages as the Bureau did previously.” *Id.* at *6, para. 23 (emphasis in original). The proposed forfeiture in this case predates the *T-Mobile* decision.

⁵⁹ See NAL Response at 3.

⁶⁰ We also note that Corr’s reliance on the waivers granted in the *Hearing Aid Compatibility GSM Waivers Extension Order* is misplaced. That decision addressed petitions for extensions of previously granted limited waivers of former Section 20.19(c)(2)(i)(A), pertaining to the obligation to offer two M3-rated handset models. In the waiver decision, the Commission decided to accept a GSM dual-band handset’s hearing aid compatibility rating (continued....)

In contrast, Corr did not seek such a waiver or request an extension of the deployment deadline.⁶¹

16. Corr's claimed downward adjustment for a "voluntary disclosure" is also without merit. In *T-Mobile Northeast*, the Bureau found that a downward adjustment was appropriate based on the company's voluntary disclosure of the violation to Commission staff "prior to the Commission's initiation of an investigation."⁶² In this case, however, Corr did not disclose to the Commission its hearing aid-compatible handset deployment violations prior to filing its 2006 Report. In fact, Corr submitted its 2006 Report identifying its handset model offerings in response to a Commission requirement.⁶³ Consequently, we decline to reduce the forfeiture amount on that basis.⁶⁴

17. Although Corr claims to have a history of overall compliance with the Commission's rules, we note that on May 11, 2009, Corr was issued a *Notice of Apparent Liability for Forfeiture* for its violation of Section 1.903(a) of the Rules for operating Common Carrier Fixed Point-to-Point Microwave stations on unauthorized frequencies.⁶⁵ Based on the record in that proceeding, Corr discovered that it was in violation of Section 1.903 on June 16, 2008, shortly before the release of the *NAL*.⁶⁶ We therefore find that Corr did not have a history of compliance and decline to reduce the forfeiture amount on that basis.

18. After considering all the facts and circumstances, including Corr's annual revenues of approximately \$28.8 million at the time the *NAL* was issued,⁶⁷ the duration of the violation which continued for nearly one year after the September 18, 2006, deployment deadline, and more accurate information about Corr's size, we conclude that a modest downward adjustment of the forfeiture amount proposed in the *NAL* is warranted.

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in the 1900 MHz band as the rating for the handset overall. *Hearing Aid Compatibility GSM Waivers Extension Order*, 22 FCC Rcd 20459, 20460-20461, para. 1. The Commission granted extensions of these waivers based on a record demonstrating widespread uncertainty regarding the circumstances under which these particular handsets would be considered to be hearing aid compatible. Therefore, the waivers granted in the *Hearing Aid Compatibility GSM Waivers Extension Order* are not analogous to this case.

⁶¹ We also reject Corr's argument that the Division doubled the \$15,000 forfeiture for the violation that was within the statute of limitations because no forfeiture could be assessed for the violation that was outside the statute of limitations. After carefully considering all of the statutory factors outlined in Section 503(b)(2)(E) of the Act, and consistent with the *Forfeiture Policy Statement*, the Division proposed an upward adjustment of the \$15,000 base forfeiture because Corr was in violation of former Section 20.19(d)(2) for almost a full year after the September 18, 2006 deadline, and because of the Division's determination that Corr was an atypical Tier III carrier. Thus, contrary to Corr's assertions, the *NAL* did not improperly assess a second \$15,000 base forfeiture against Corr for the handset deployment violation that was beyond the statute of limitations.

⁶² *T-Mobile Northeast*, 21 FCC Rcd at 11806-07, para. 19.

⁶³ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787, para. 89.

⁶⁴ See *SBC Communications, Inc.*, Forfeiture Order, 16 FCC Rcd 10963, 10969, para. 16 (Enf. Bur. 2001) (finding that a carrier's disclosure of certain collocation violations in an audit report it was required to file did not constitute a voluntary disclosure, and thus did not warrant a reduction in the forfeiture).

⁶⁵ See *Corr Wireless Communications, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 5419 (Enf. Bur. 2009) (forfeiture paid).

⁶⁶ See *id.* at 5419, para. 3.

⁶⁷ *NAL*, 23 FCC Rcd at 11572-73, para. 13. We note that Corr does not challenge the accuracy of the revenue figure referenced in the *NAL*.

19. Accordingly, based on the record before us, we conclude that Corr willfully⁶⁸ and repeatedly⁶⁹ violated former Section 20.19(d)(2) of the Rules, but reduce the proposed \$30,000 forfeiture to \$20,000.

IV. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b)⁷⁰ of the Act, and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,⁷¹ Corr Wireless Communications, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for willful and repeated violation of former Section 20.19(d)(2) of the Rules.⁷²

21. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.⁷³ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.⁷⁴ Corr Wireless Communications, LLC shall send electronic notification of payment to Pamera Hairston at Pamera.Hairston@fcc.gov, Kathy Harvey at Kathy.Harvey@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

22. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁷⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be

⁶⁸ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312 clarifies that this definition of willful applies to both Sections 312 and 503 of the Act, H.R. Conf. Rep. No. 97-765 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California*, 6 FCC Rcd at 4388, para. 5; *see also Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237, para. 12 (2008); *San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1042, para. 9 (2007), *consent decree ordered*, Order and Consent Decree, 25 FCC Rcd 1494 (2010).

⁶⁹ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that "[t]he term 'repeated' . . . means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). *See Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 9 (2001), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 22626 (2002) (forfeiture paid); *Southern California*, 6 FCC Rcd at 4388, para. 5.

⁷⁰ 47 U.S.C. § 503(b).

⁷¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁷² *Id.* § 20.19(d)(2) (2006).

⁷³ *See id.* § 1.80.

⁷⁴ 47 U.S.C. § 504(a).

⁷⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

23. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁷⁶ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

24. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by first class mail and certified mail return receipt requested to Tom Buchanan, Corr Wireless Communications, LLC, P. O. Box 1500, Oneonta, AL 35121, and to Donald J. Evans, Esq., counsel for Corr Wireless Communications, LLC, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁷⁶ See 47 C.F.R. § 1.1914.